

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROL Y. BURROWS and U.S. POSTAL SERVICE,  
POST OFFICE, Houston, Tex.

*Docket No. 97-2033; Submitted on the Record;  
Issued June 7, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability commencing August 7, 1996, causally related to her August 3, 1994 accepted soft tissue lumbar strain injury and sacroiliitis.

The Office of Workers' Compensation Programs accepted that on August 3, 1994 appellant sustained lumbar strain and later accepted that she sustained sacroiliitis. Appellant returned to limited duty in March 1996 and on July 30, 1996 the Office found that her limited-duty position fairly and reasonably represented her wage-earning capacity.

On August 16, 1996 appellant filed a claim alleging recurrence of disability commencing August 7, 1996, causally related to her August 3, 1994 injury. Appellant reiterated her belief that her present condition was due to the 1994 injury and she submitted some August 8, 1996 hospital records regarding her presentation in the emergency room. The onset of symptoms was noted to have occurred on August 8, 1996 and the chief complaint was reported as severe back pain. A radiology report that date indicated that appellant demonstrated mild degenerative changes of the lumbosacral spine. However, an emergency room physician suggested a herniated lumbar disc with nerve root impingement as a differential diagnosis. Causation was not discussed. Magnetic resonance imaging (MRI) scan of that date reported as demonstrating focally accentuated degenerative disc disease at L5-S1, diffuse prominence of the annular ligament structure in the caudal lumbar spine most noticeable at L5-S1, centrally, some prominence of ligamentum flavum posteriorly at L5-S1 which produced spinal stenosis at the lumbosacral junction level and bilateral neural foramen narrowing at the lumbosacral junction. A second evaluating physician reported as history that appellant had a "two-year history of low back pain secondary to a workman's compensation injury," and he diagnosed degenerative disc disease but provided no rationale supporting causation with appellant's 1994 soft tissue muscular injury and sacroiliitis.

Appellant also submitted an August 12, 1996 work release from Dr. James E. Butler, a Board-certified orthopedic surgeon, which noted the diagnosis of herniated nucleus pulposus at L5-S1 on the right and which recommended no work.

Appellant also submitted a narrative medical report from Dr. Mark F. McDonnell, a Board-certified orthopedic surgeon, dated August 20, 1996. The August 20, 1996 narrative report, noted a history of injury as a fall in 1994 with no neurologic deficits, continued intermittent back pain and loss of sensation in the right foot developing two weeks prior to examination. Dr. McDonnell reported a full range of motion, normal and equal extremity strength, negative straight leg raising and negative femoral stretch and good lower extremity pulses bilaterally. He reported slightly hyperreflexic reflexes bilaterally in the knees and ankles, stocking-like numbness in the right leg and foot with complete anesthesia, extreme tenderness of the low back at the midline and tenderness over the left sciatic notch. Dr. McDonnell stated that a recent MRI scan showed changes at L5-S1 suggestive of a small to moderate sized herniated disc and a small amount of foraminal stenosis at the lumbosacral junction. He diagnosed lumbar degenerative disc disease with secondary sciatica and a possible central herniated disc, but he did not discuss causation.

By letter dated October 10, 1996, the Office requested additional factual and medical information to support her claim. In response, appellant submitted two October 30, 1996 form reports, from Dr. McDonnell which provided the date of injury as August 4, 1994, checked “yes” to the form question on causal relation, but provided no explanation or history of injury. Both reports provided findings upon examination and diagnoses unchanged from the August 20, 1996 narrative report. The form reports recommended spinal fusion and released appellant to light duty effective October 2, 1996 with restrictions on heavy lifting, prolonged standing or squatting.

By decision dated December 11, 1996, the Office rejected appellant’s recurrence claim finding that the evidence of record failed to establish that she sustained a recurrence of disability, causally related to her August 3, 1994 injuries. The Office found that the evidence submitted did not demonstrate a material change in the August 3, 1994 accepted conditions of lumbar strain and sacroiliitis, or in appellant’s limited-duty assignment.

By letter dated January 2, 1997 and received by the Office on March 19, 1997 appellant requested reconsideration. Appellant reiterated her history of treatment following the claimed recurrence of disability and indicated that the emergency room staff of August 8, 1996 gave an incorrect history of injury.<sup>1</sup> Appellant stated that the pain and numbness began while she was driving to work on August 7, 1996.<sup>2</sup> Appellant further submitted a December 31, 1996 report from Dr. McDonnell, which noted that he had not seen appellant since August 20, 1996 when he evaluated her for low back pain and diagnosed discogenic pain syndrome. He stated that she had a fall in 1994 and that since Dr. Butler, who referred appellant to him in August 1996, felt that

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<sup>1</sup> The history of injury given by the emergency room physician on August 8, 1996 was that she was sitting in a chair before driving to work, leaned forward, and felt pain and numbness in her right leg.

<sup>2</sup> The history of injury given by appellant on her CA-2 recurrence claim form was merely that she felt “funny” on August 7, 1996 that her back was still hurting and that she felt numbness in her right foot.

appellant's problems were caused by the accepted injury, he also felt that these problems were a continuation and a natural consequence on the 1994 injury.

By decision dated April 15, 1997, the Office denied modification of the December 1, 1996 decision, finding that the evidence submitted was insufficient to warrant modification. The Office found that Dr. McDonnell's opinion on causal relationship with appellant's 1994 injury was conclusory and was not supported by medical rationale. The Office noted that diagnostic imaging done within five months of the initial injury showed degenerative joint disease at L4-5 and early L5-S1 intervertebral disc degeneration already present, but no herniated disc. The Office concluded that the medical evidence of record did not explain how progression of a preexisting degenerative lumbar disease and the possible presence of a herniated disc two years after the 1994 injury, could be attributed to the accepted soft tissue muscle strain injury or sacroiliitis.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing August 7, 1996, causally related to her August 3, 1994 accepted soft tissue lumbar strain injury and sacroiliitis.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he or she cannot perform the light duty.<sup>3</sup> As part of this burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.<sup>4</sup> Appellant has made no such showing in this case.

Appellant has not implicated any change in her work factors or requirements as the cause of her August 7, 1996 recurrence of disability, and has provided no evidence supporting such a change. Therefore, to establish her claimed recurrence, appellant must submit medical evidence sufficient to demonstrate a change in the nature or extent of her accepted employment-related conditions of lumbar strain and sacroiliitis.

However, none of the medical evidence submitted demonstrates such a change. The hospital records from August 8, 1996 merely report, appellant's version of her medical history and suggest a herniated disc and degenerative disc disease with nerve root impingement. These reports totally lack any opinions on causal relation with appellant's 1994 accepted soft tissue muscular strain injury or sacroiliitis. Consequently, these reports do not support a change in the nature or extent of appellant's injury-related conditions.

Dr. McDonnell's August 20, 1996 report discusses her present condition but omits any mention of causation. Therefore, this report does not establish appellant's claim. His October 30, 1996 form reports, noted the date of injury as August 3, 1994, reported physical findings consistent with his August 20, 1996 report, and checked "yes" to the question of whether appellant's present condition was due to the original injury. However, the Board has

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<sup>3</sup> *Terry R. Hedman*, 38 ECAB 222 227 (1986).

<sup>4</sup> *Id.*

frequently explained that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without any further explanation, that opinion has little probative value and is insufficient to establish causal relationship.<sup>5</sup> Therefore, these forms reports are insufficient to establish appellant's recurrence claim. Finally, in his December 31, 1996 report, Dr. McDonnell reported appellant's history of a fall in 1994, noted that Dr. Butler felt her present condition was related,<sup>6</sup> and merely agreed, concluding that, therefore, he also felt appellant's problems were a continuation and a natural consequence of the 1994 injury. No supporting explanation, however, was given. The Board has frequently explained that medical opinions which are merely conclusory and lacking in medical rationale, are of diminished probative value.<sup>7</sup> As Dr. McDonnell's statement is merely a conclusion based upon another physician's opinion which is not part of this record, and is totally lacking in any supporting explanation as to how appellant's degenerative disc disease was a continuation of and a natural consequence of a lumbosacral soft tissue muscle strain and sacroiliitis, it is of diminished probative value such that it is insufficient to establish appellant's recurrence claim. As no further rationalized medical opinion evidence supporting causal relation with the 1994 injuries was submitted, appellant has failed to meet her burden of proof to establish her recurrence claim.

Accordingly, the decisions of the Office or Workers' Compensation Programs dated April 15, 1997 and December 1, 1996 are hereby affirmed.

Dated, Washington, D.C.  
June 7, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>6</sup> The Board notes that no such evidence with this conclusion has been submitted to the record.

<sup>7</sup> *See Leon Harris Ford*, 31 ECAB 514 (1980); *Neil Oliver*, 31 ECAB 400 (1980); *Leontine F. Lucas*, 30 ECAB 925 (1979).